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Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**DEFENDANTS' MEMORANDUM
REGARDING APEX DOCTRINE AS
TO JIM C. BEASLEY**

Pursuant to CMO No. 15, Bard submits its brief regarding whether Jim Beasley has “unique, first-hand, non-repetitive knowledge of the facts at issue in this case” and “whether Plaintiffs have exhausted other less-intrusive discovery methods.”

Mr. Beasley has no unique, first-hand, non-repetitive knowledge of the facts at issue in this case. Before 2007, Mr. Beasley was the President of Bard Access Systems (“BAS”), a subsidiary of C. R. Bard that does not involve IVC filters. When Mr. Beasley became President of Bard Peripheral Vascular (“BPV”) in 2007, he had responsibilities for all of BPV’s products, approximately 170 in total. In 2009, Mr. Beasley was promoted to Group Vice-President of BPV and BAS, and his responsibilities increased to

1 include more than 1000 additional medical devices. Since 2013, Mr. Beasley has been
2 Group President of C. R. Bard. Initially, his corporate responsibilities included oversight
3 of BPV and BAS. Since that time, his responsibilities have expanded, and now include
4 global responsibilities, including oversight of Bard Japan (among other international
5 entities). His responsibilities continue to include oversight of literally hundreds, indeed
6 thousands, of medical devices.

7 Mr. Beasley's role at BPV and BAS was and is to ensure that the companies
8 operate pursuant to Bard's overall objectives. Given the breadth of products that he has
9 overseen, Mr. Beasley necessarily has had no day-to-day, hands-on experience with the
10 products. Concerning Bard's line of IVC filters, Mr. Beasley has had no day-to-day
11 involvement regarding the issues in this litigation.

12 More importantly, all knowledge that Mr. Beasley possesses regarding Bard's line
13 of IVC filters is also known by one or more of BPV's vice-presidents and other
14 employees who report to them. These employees have significantly more hands-on, day-
15 to-day experience and first-hand knowledge about Bard's line of IVC filters than Mr.
16 Beasley could have, given his high-level position.

17 To date—and despite Bard's repeated requests—the plaintiffs have not identified a
18 single issue that they think Mr. Beasley uniquely knows. Rather, the plaintiffs have made
19 a series of unsubstantiated claims about Mr. Beasley in the Parties Joint Status Report for
20 the August 23, 2016 Case Management Conference (Doc. 3102). First, the plaintiffs
21 claim that “Mr. Beasley was an active decision maker with respect to IVC filters as the
22 President of BPV from 2007 to 2012” (*Id.* at 15.) But vaguely stating that Mr. Beasley
23 generally was an “active decision maker” over a five-year period is not the same as
24 proving that he has “unique, first-hand, non-repetitive knowledge” about any specific
25 decisions. Second, the plaintiffs claim that Mr. Beasley “would have been advised of,
26 consulted,” and “involved in” decisions on various subjects. (*Id.*) As a president of the
27 division, and now Group President of the parent company, of course he would. But being
28 “advised of, consulted” and “involved in” unspecified decisions is not proof that Mr.

1 Beasley has any “unique, first-hand, non-repetitive knowledge” of these alleged and
 2 unspecified decisions. Finally, the plaintiffs claim that “[i]t appears Mr. Beasley was also
 3 the decision maker in deciding to continue selling the G-2 while it sold another filter it has
 4 asserted was safer, the Eclipse.” (*Id.*) The plaintiffs, however, have not conducted any
 5 discovery about whether there even was a decision to continue selling the G2 Filter at the
 6 same time as the Eclipse Filter, nor have they conducted any discovery about who made
 7 any such decision. Thus, the plaintiffs have no foundation for their assertion about Jim
 8 Beasley’s alleged role as “the decision maker,” let alone evidence that Mr. Beasley
 9 possesses “unique, first-hand, non-repetitive knowledge” about any such decision.

10 **Plaintiffs have not exhausted other less-intrusive discovery methods.** To date
 11 in the MDL, the plaintiffs have not asked Bard witnesses about **any** of the issues that they
 12 identified in the parties’ recently submitted Joint Status Report (Doc. 3102). Of the four
 13 witnesses in the MDL who they have questioned about Mr. Beasley, none of the plaintiffs’
 14 questioning concerned any unique, first-hand, non-repetitive knowledge of the facts at
 15 issue in this litigation. Rather, the questioning about Mr. Beasley was incidental and
 16 superficial. The plaintiffs asked John DeFord about an e-mail that merely “cc:’d” Mr.
 17 Beasley. The plaintiffs asked Bret Baird who Mr. Beasley is; whether Mr. Beasley was
 18 involved in Mr. Baird’s termination (Baird had “no idea”); the frequency of his contacts
 19 with Mr. Beasley (rare); whether Mr. Beasley has any military background (“I don’t
 20 know”); and what Mr. Beasley’s “personality” is like. The plaintiffs asked William Little
 21 about an e-mail chain that involved Mr. Beasley in which Mr. Beasley responded that Gin
 22 Schultz was going to take the lead on the issue being discussed. Finally, the plaintiffs
 23 asked Cindi Walcott if she had any professional interaction with Mr. Beasley (no).

24 In sum, the plaintiffs have undertaken no efforts to identify any unique knowledge
 25 that Mr. Beasley may have, nor have they made any attempt to exhaust less-intrusive
 26 discovery methods to learn about any such knowledge. For these reasons, the plaintiffs
 27 have not met their burden of proof to take Mr. Beasley’s “apex” deposition, and the Court
 28 should not permit deposition.

DATED this 26th day of August, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2016, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

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